

UNITED STATES COURT OF APPEALS July 12, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker  
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 11-1249

ADAM GERONIMO MORALES,

Defendant - Appellant.

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**ORDER**

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Before **MURPHY, O'BRIEN** and **GORSUCH**, Circuit Judges.

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This matter is before the court on the government's motion to dismiss.

Upon consideration thereof, the government's motion is **GRANTED**.

In a criminal appeal, the defendant's notice of appeal is to be filed within 14 days of entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A). This rule is an "inflexible claim-processing rule[], which unlike a jurisdictional rule, may be forfeited if not properly raised by the government." *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007) (internal quotation omitted).

Here, even if we assume that the defendant is entitled to benefit from Fed.

R. App. P. 4(c), as he claims, his appeal was filed more than 14 days after entry of the May 5, 2011 order. The defendant contends that he placed his notice of appeal in the prison mail on May 24. However, the notice was due on May 19. The defendant's reliance on the 3-day grace period set forth in Fed. R. App. P. 26(c) is misplaced. Rule 26(c) does not apply to notices of appeal. *See Savage v. Cache Valley Dairy Association*, 737 F.2d 887, 888 (10th Cir. 1984).

The government properly raised the timeliness issue in its motion to dismiss. "Because the government timely objected to [the defendant's] late notice of appeal, this court is bound to dismiss the appeal." *Garduno*, 506 F.3d at 1292.

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter  
Deputy Clerk/Jurisdictional Attorney